

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

GARY L. GAINES,)
vs.)
Plaintiff,)
UNITED STATES MARSHAL'S SERVICE,) Case No. CIV-09-190-JHP-SPS
et al.,)
Defendants.)

OPINION AND ORDER

On December 8, 2009, Plaintiff, appearing *pro se*, filed a Second Amended Civil Rights Complaint pursuant to 42 U.S.C. § 1983. This matter comes on for decision of the Defendant State of Oklahoma's Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 77), pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), in which the State asserts their Eleventh Amendment immunity. Plaintiff has not filed a response to said motion.

It is well-established that, absent consent, suit against a state in federal court is barred by the Eleventh Amendment. *Pennhurst State Sch. & Hosp. V. Halderman*, 465 U.S. 89, 100, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984). “[O]nce effectively asserted [Eleventh Amendment] immunity constitutes a bar to the exercise of federal subject matter jurisdiction.” *Fent v. Okla. Water Res. Bd.*, 235 F.3d 553, 559 (10th Cir. 2000) (original emphasis omitted). “Neither the state, nor a governmental entity that is an arm of the state for Eleventh Amendment purposes, nor a state official who acts in his or her official capacity, is a “person” within the meaning of § 1983.” *Harris v. Champion*, 51 F.3d 901, 905-906

(10th Cir. 1995); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71, 109 S.Ct. 2304, 2312, 105 L.Ed.2d 45 (1989). As a result, Plaintiff's claims against the State of Oklahoma shall be dismissed with prejudice based on Eleventh Amendment immunity.

Accordingly, for the reasons set forth herein, Defendant State of Oklahoma's Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 77) is hereby **GRANTED** and it is hereby ordered that Plaintiff's claims against the State of Oklahoma are dismissed with prejudice.

It is so ordered on this 22nd day of March, 2010.



James H. Payne
United States District Judge
Eastern District of Oklahoma